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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,035	11/17/2003	James BAECHLE	4096	1034

23699 7590 10/05/2005

CLAUSEN MILLER, P.C  
SUITE 1600  
10S. LASALLE STREET  
CHICAGO, IL 60603

EXAMINER
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CHAN, KO HUNG

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/707,035	<b>Applicant(s)</b> BAECHLE, JAMES	
	<b>Examiner</b> Korie H. Chan	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

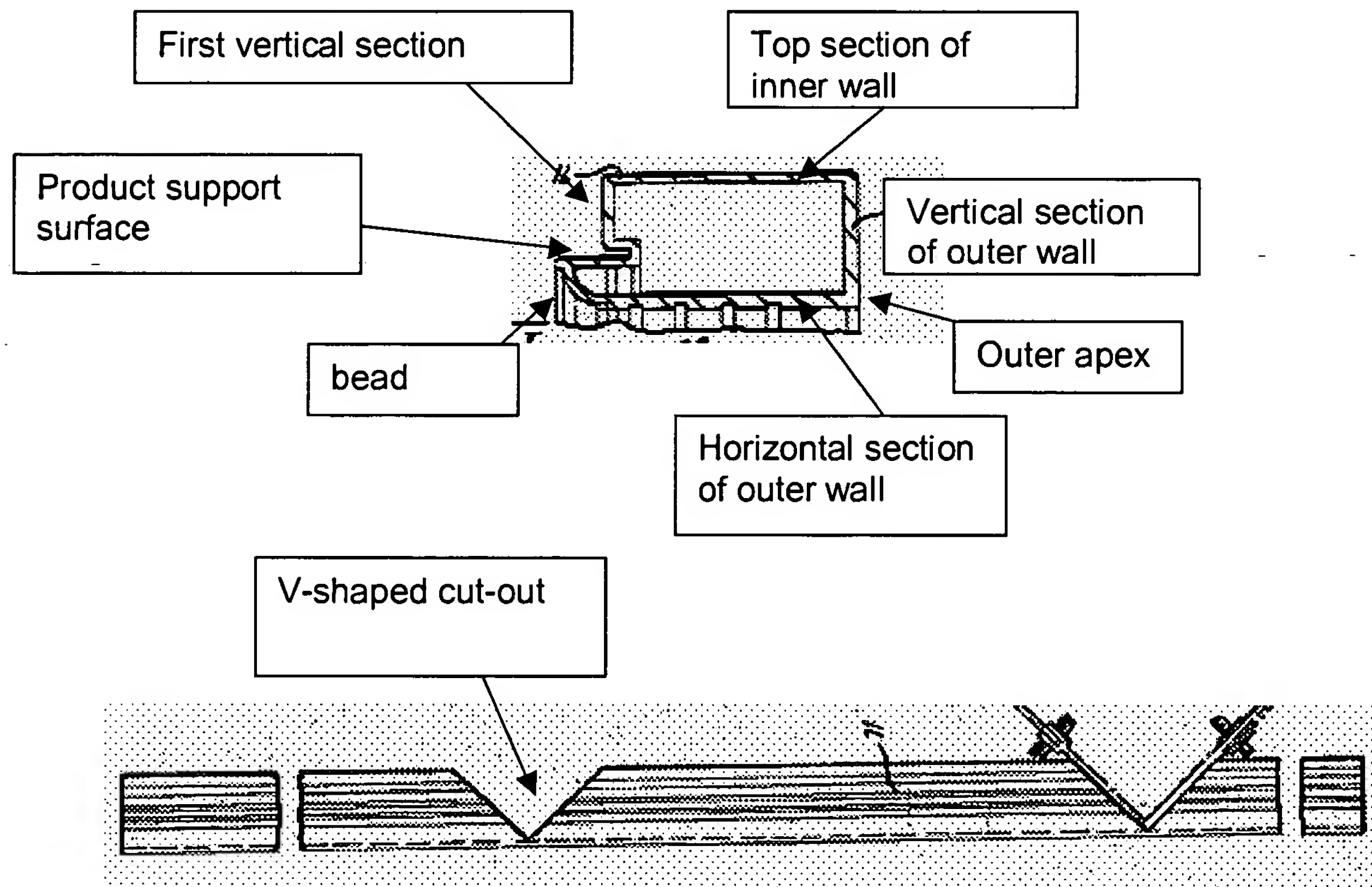
- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. <u>7/12/2005</u> .                                   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.  | 6) <input type="checkbox"/> Other: _____.                                   |

### DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Tarte (US patent no. 3,097,684). Tarte discloses a method of forming a hollow frame having all the claimed features of applicant's invention as illustrated below.

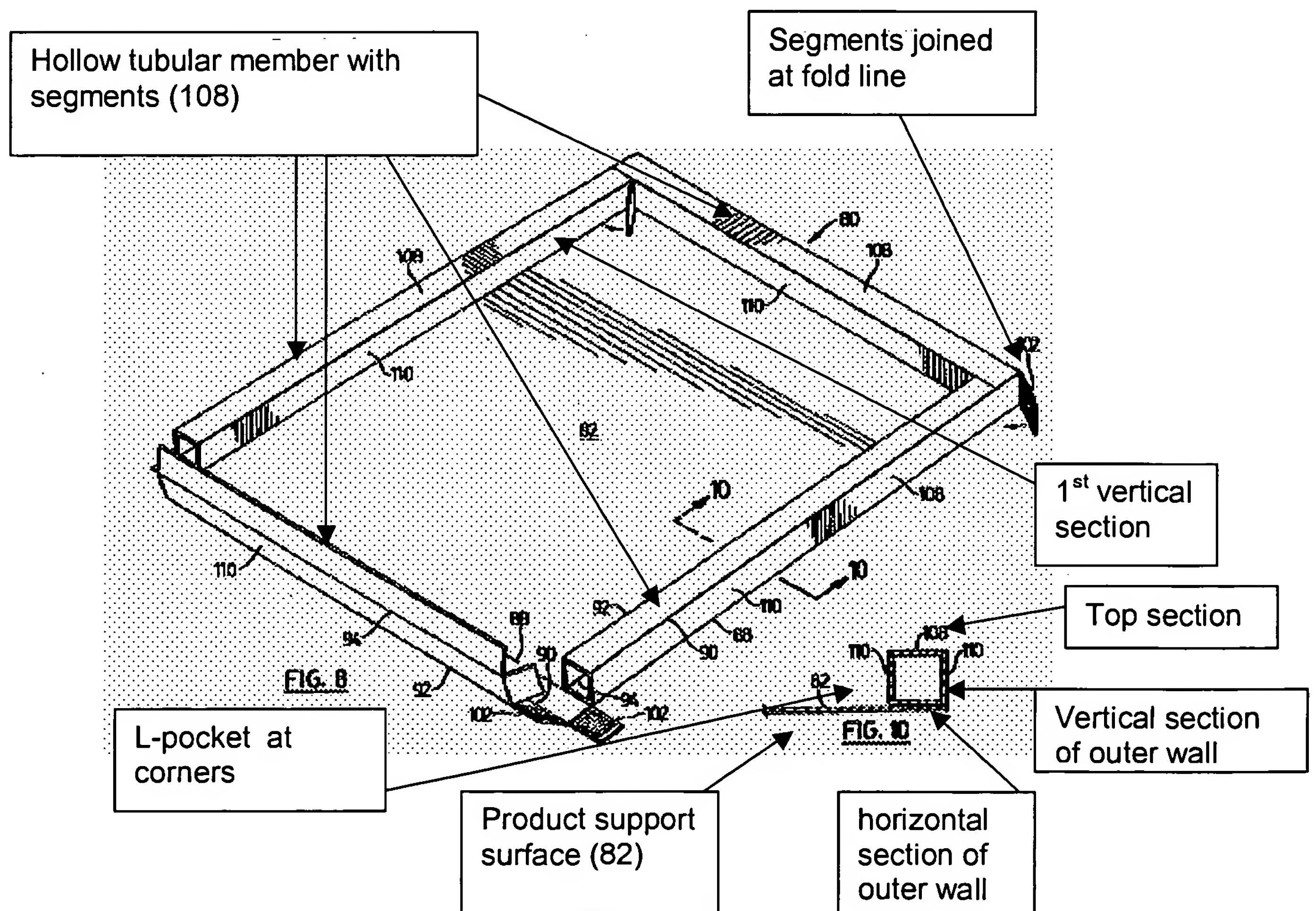


Regarding claim 2, Tarte shows L-shaped pockets (form by the first vertical section and the product support surface as illustrated above) in the tubular member.

Regarding claim 7, Tarte's top section is removed to form the V-shaped notch at the corners.

Applicant's intended use "for supporting a product" or "configured to receiving vertical stacking and cushioning post" are not accorded patentable weight since Tarte's frame is capable of performing such recited functions of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claims 1, 2, 5, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gottlieb (US patent no. 5,473,995). Gottlieb discloses a base pad made of cardboard having all the claimed features of applicant's invention as illustrated below.



***Claim Rejections - 35 USC § 103***

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gottlieb (US patent no. 5,473,995) in view of Propst (US patent no. 4,279,204). Gottlieb disclosed all the claimed features of applicant's invention except for providing holes in product support surface. Propst teaches providing product support surface (18) with holes (40) to facilitate stacking. It would have been obvious to one of ordinarily skilled in the art to have modify the base pad of Gottlieb such that holes are provide on the product support surface to facilitate stacking as taught by Propst.

Claims 4, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gottlieb (US patent no. 5,473,995) in view of Tarte (US patent no. 3,097,684). Gottlieb disclosed all the claimed features of applicant's invention except for forming the tubular member from linear segment folded about V-shaped notches. To forming hollow frame members via bending linear segment having V-shaped notches is notoriously old and well-known. Such has the well-known advantage of easy assemblage and manufacturing. Tarte discloses a method of forming a hollow frame by bending the tubular member from linear segment folded about V-shaped notches as illustrated above. It would have been obvious to one of ordinarily skilled in the art to have made the base pad of Gottlieb via forming the tubular member from linear segment folded about V-shaped notches as taught by Tarte for the well-known advantage of easy assemblage and manufacturing.

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Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gottlieb (US patent no. 5,473,995) in view of Morgan, IV et al. (US patent no. 5,440,998).

Gottlieb disclosed all the claimed features of applicant's invention except for making the base pad of extruded plastic. Morgan teaches making a base pad of extruded plastic (col. 3, lines 30-31). It would have been obvious to one of ordinarily skilled in the art to have made the base pad of Gottlieb from extruded plastic as such material is old and well-known in the art as demonstrated by Morgan.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7, 12 and 13 have been considered but are moot in view of the new ground(s) of rejection.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 571-272-6816. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Korie H. Chan  
Primary Examiner  
Art Unit 3632

Khc  
September 27, 2005